

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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OUR WICKED LADY LLC (d/b/a "Our Wicked	:	21cv0165 (DLC)
Lady"), et al.,	:	
	:	<u>ORDER</u>
Plaintiffs,	:	
-v-	:	
	:	
ANDREW CUOMO, in his official capacity	:	
as Governor of the State of New York;	:	
STATE of NEW YORK; BILL de BLASIO, in	:	
his official capacity as Mayor of New	:	
York City; and THE CITY of NEW YORK,	:	
	:	
Defendants.	:	
	:	
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DENISE COTE, District Judge:

On January 8, 2021, the plaintiffs -- a group of 74 New York City business, 69 of which are bars and restaurants -- filed a complaint against New York City (the "City"), Mayor Bill de Blasio ("Mayor de Blasio"), New York State (the "State"), and Governor Andrew Cuomo ("Governor Cuomo"). The complaint alleges that a series of State and City Executive Orders ("EO") beginning March 7, 2020 violated the plaintiffs' rights under to the Due Process, Equal Protection, and Takings Clauses of the U.S. and New York Constitutions.

On February 5, 2021, the plaintiffs filed a motion to preliminarily enjoin enforcement of State EO 202.93, which limited indoor dining in the City to 25% capacity, and City EO No. 144, which prohibited the reopening of indoor group fitness

classes in the City. In a letter of February 22, Mayor de Blasio and the City notified the Court of their intention to file a cross-motion to dismiss the complaint in addition to their opposition to the motion for a preliminary injunction. An Order of February 22 allowed the plaintiffs to file any amended complaint by March 9.

An Opinion of March 9 denied the plaintiffs' motion for a preliminary injunction. See Our Wicked Lady LLC v. Cuomo, No. 21CV0165 (DLC), 2021 WL 915033 (S.D.N.Y. Mar. 9, 2021) (the "March Opinion"). The March Opinion set forth the legal standards for each of the plaintiffs' claims and explained the deficiencies in their claims.

The plaintiffs filed a first amended complaint ("FAC") on March 9. The FAC is substantively identical to the complaint. It pleads the same claims and makes no changes to address the infirmities identified in the March Opinion. Its only changes are the addition of plaintiffs and the assertion of claims against Governor Cuomo in his individual capacity.

An Order of March 10 terminated the City defendants' motion to dismiss the complaint as moot. The defendants filed motions to dismiss the FAC on April 30. The motions to dismiss became fully submitted on June 4.

When deciding a motion to dismiss for failure to state a claim pursuant to Rule 12(b)(6), Fed. R. Civ. P., a court

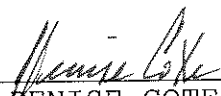
"consider[s] the legal sufficiency of the complaint, taking its factual allegations to be true and drawing all reasonable inferences in the plaintiff's favor." Brooklyn Ctr. for Psychotherapy, Inc. v. Philadelphia Indem. Ins. Co., 955 F.3d 305, 310 (2d Cir. 2020) (citation omitted). "A complaint will survive a motion to dismiss so long as it contains sufficient factual matter to state a claim to relief that is plausible on its face." Mandala v. NTT Data, Inc., 975 F.3d 202, 207 (2d Cir. 2020) (quoting Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009)).

For the reasons set out in the March Opinion, the plaintiffs have failed to state claims under the federal and state Due Process, Equal Protection, and Takings Clauses. In addition, its claims for injunctive relief are moot. Accordingly, it is hereby

ORDERED that the FAC is dismissed.

IT IS FURTHER ORDERED that the Clerk of Court shall enter judgment for the defendants and close the case.

Dated: New York, New York  
June 11, 2021

  
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DENISE COTE  
United States District Judge